

**DISTRICT OF COLUMBIA**  
**DOH Office of Adjudication and Hearings**  
825 North Capitol Street N.E., Suite 5100  
Washington D.C. 20002

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

KINFEL-MICHAEL ASRAT  
Respondent

Case No.: A-01-80076

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER  
CONCERNING WHETHER RESPONDENT’S DOGS ARE DANGEROUS DOGS**

**I. Introduction**

On June 28, 2001, the Government filed a request for a hearing pursuant to D.C. Code §6-1021.2(a) to determine whether “Diesel” and “Leika,” two dogs owned by Respondent Kinfe-Michael Asrat, are dangerous dogs and, if so, whether they would constitute a significant threat to public health and safety if returned to Dr. Asrat. A ruling in favor of the Government on both issues would authorize the Government to humanely destroy the dogs pursuant to D.C. Code § 6-1021.3.<sup>1</sup>

The statute requires that a hearing on the Government’s request must be held within no less than five and no more than ten days after service of the notice of the hearing upon the owner

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<sup>1</sup> This administrative court has jurisdiction over this matter pursuant to Reorganization Plan No. 4 of 1996, Mayor’s Order Nos. 97-42, 99-68, and 00-98 and Department of Health Organizational Order Nos. 99-24 and 01-26.

of the dog, excluding Saturdays, Sundays and holidays. D.C. Code § 6-1021.2(c). On June 29, 2001, I issued an order convening a hearing, which served as the notice of the hearing required by the statute. The order scheduled a status conference for July 6, 2001 and set a hearing date of July 12, 2001. Dr. Asrat did not receive a copy of that order before the scheduled conference because the Government had supplied an incorrect address for him. Accordingly, I conducted a telephonic status conference with the parties on July 6, and, at Dr. Asrat's request, re-scheduled the hearing for July 11, 2001. The parties subsequently sought a postponement of the hearing until July 19, 2001, and I granted that request.<sup>2</sup>

All parties appeared for the hearing on July 19. Testimony concluded on July 20. Thomas Collier, Esq. represented the Government, and Respondent appeared *pro se*. At the conclusion of the hearing, Dr. Asrat requested additional time to submit evidence concerning whether the dogs would be a significant threat to public health and safety if returned to him. After discussion of the timing of any such submissions, I informed the parties that I would issue my findings of fact and conclusions of law on the first issue in the case, *i.e.*, whether either of the dogs satisfies the statutory definition of a "dangerous dog," and, depending upon the outcome, would then establish a deadline for the filing of any additional evidence on the second issue. Accordingly, this opinion decides only whether either dog meets the definition, and is being issued within five days of the close of the record on that issue, excluding intervening weekend days. *See* D.C. Code § 6-1021.2(d).

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<sup>2</sup> The postponement meant that the hearing occurred more than ten days from the date of the June 29 hearing notice, even excluding intervening weekends and the July 4 holiday. All parties, however, agreed to the postponement.

## **II. Findings of Fact**

Based upon the testimony of all the witnesses, my evaluation of their credibility, the items introduced into evidence and the entire record in this matter, I now make the following findings of fact.

Dr. Asrat owns an apartment building located at 3504 13<sup>th</sup> Street, N.W., which he purchased in October 2000. Dr. Asrat occupies a basement apartment in the building as a residence at least some of the time, and his son also has occupied that apartment at times.<sup>3</sup> Dr. Asrat has kept three dogs in the basement apartment. The dogs are either pit bulls or mixed breed pit bulls. One of them, “Diesel,” is brown and white, and the other two, “Leika” and “Pinky” are black and white. Leika is the mother of Diesel and Pinky.

Two different incidents are at issue in this case. One allegedly occurred on June 2, 2001 and the other took place on June 9, 2001. I will discuss each incident separately.

### **A. The June 2 Incident**

Leopoldo Mejicanos lives in the apartment building at 3504 13<sup>th</sup> Street, N.W. He testified that he was returning home from buying food on June 2, 2001 between 6 and 7 PM. He testified that he was on the stairs leading to the basement of the building when a brownish red pit bull attacked him, biting him on the knee. Mr. Mejicanos testified that he did nothing to provoke

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<sup>3</sup> It is unclear from the record whether the apartment at 3504 13<sup>th</sup> Street is Dr. Asrat’s only residence. Whether Dr. Asrat resides full-time at the 13<sup>th</sup> Street address is not material in this case, however.

the attack, but was simply walking on the stairs. Mr. Mejicanos testified that the dog ran to the basement after biting him and that Dr. Asrat then took the dog and locked it in the basement.<sup>4</sup> According to Mr. Mejicanos, Dr. Asrat then got into his car and left. Mr. Mejicanos testified that his leg was bleeding from the dog bite, which caused him to miss two days of work. He also testified that he later attempted to speak with Dr. Asrat about the attack, but that Dr. Asrat simply made a dismissive sign with his hand and refused to discuss the matter.

At the hearing, Mr. Mejicanos was unable to identify Respondent's Exhibit ("RX") 202, a picture of Diesel, as a picture of the dog that bit him. He testified that he needed to see the dog in person in order to be sure. I find, however, that Mr. Mejicanos' testimony sufficiently described Diesel as the dog that bit him. According to Mr. Mejicanos, Dr. Asrat took the dog into the basement after the bite. Dr. Asrat's taking charge of the dog is sufficient for me to infer that the dog was Dr. Asrat's. Because Diesel is the only brown dog owned by Dr. Asrat, Mr. Mejicanos' description of the dog as reddish brown is sufficient for me to find that Diesel is the dog that Mr. Mejicanos described, absent any evidence that some other dog was on the premises on June 2.

In his testimony, Dr. Asrat denied that Diesel had bitten Mr. Mejicanos. He maintained that there had been no encounter between Diesel and Mr. Mejicanos on June 2. Dr. Asrat insisted that Mr. Mejicanos had a motive to testify falsely due to certain actions that Dr. Asrat has taken against Mr. Mejicanos. Specifically, Dr. Asrat called the police to arrest Mr. Mejicanos in March of this year after Mr. Mejicanos allegedly threw a bottle out of a window at

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<sup>4</sup> Throughout his testimony, Mr. Mejicanos referred to Dr. Asrat as "Dr. Michael."

him. Mr. Mejicanos was arrested and spent at least one night in jail after this incident, although it is not clear how the matter ultimately was resolved. Dr. Asrat also has attempted to evict Mr. Mejicanos for alleged criminal activity and non-payment of rent. Dr. Asrat also testified that Mr. Mejicanos is regularly intoxicated. For all those reasons, Dr. Asrat suggested that Mr. Mejicanos fabricated his story after he learned of the June 9 incident in order to retaliate against him.

The Government counters that Dr. Asrat's real motivation for attempting to evict Mr. Mejicanos and other Hispanic tenants is either bias against Hispanics or a desire to renovate the building and raise the rents. In the Government's view, the attack upon Mr. Mejicanos was part of a campaign to rid the building of tenants who were undesirable to Dr. Asrat.

Dr. Asrat and Mr. Mejicanos are the only witnesses who offered testimony concerning the June 2 incident and their testimony is flatly contradictory. Deciding whether Diesel bit Mr. Mejicanos on June 2 depends upon the credibility of the witnesses. In this instance, I find Mr. Mejicanos' testimony to be the more credible.<sup>5</sup> His testimony that the dog attacked him on June 2 is corroborated by the first page of Petitioner's Exhibit ("PX") 100, which is an animal bite report form completed by a staff member at the D.C. Animal Shelter. Based on the testimony of Cecilia Keller, Chief of Animal Disease Control for the Department of Health, I find that PX-100 is a standard form used by the animal shelter to record information when an animal bite is

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<sup>5</sup> The history of animosity between Dr. Asrat and Mr. Mejicanos does not assist me in deciding who is telling the truth. On the one hand, Mr. Mejicanos might be motivated to level false accusations against Dr. Asrat to retaliate for Dr. Asrat's past actions against him. On the other hand, Dr. Asrat might believe that a dog bite would be an effective means of encouraging a tenant whom he found to be undesirable to move. In short, knowing that the two men do not get along does not help me to determine which of them is telling the truth about the events of June 2.

reported to it and that the shelter's usual practice is to complete such a form when a bite is reported. See PX-101-02, which are similar forms reporting the June 9 incident.

PX-100 identifies the Metropolitan Police Department as the source of the information contained therein, and includes the name and badge number of the reporting officer as well as a police report number. PX-100 states that the bite occurred on June 2 and that the animal shelter was notified of the bite on June 2.

I find the animal bite report to be a record of information communicated to the animal shelter from the Metropolitan Police Department on June 2. It identifies Mr. Mejicanos as the victim of a bite by a brown pit bull and identifies Dr. Asrat as the owner of the dog. The Government introduced no evidence that any police officer observed the incident, and I therefore find that the statements on the form reflect information supplied to the police by others. Nevertheless, the fact that someone had informed the police on June 2 that Mr. Mejicanos had been bitten tends to negate Dr. Asrat's contention that Mr. Mejicanos fabricated the story some time after June 9. To be sure, there is no evidence that Mr. Mejicanos himself was the source of any of the information on the animal bite report.<sup>6</sup> This does not detract from the form's value as corroborating evidence, however. PX-100 demonstrates that it is likely that *someone* told the police on June 2 that Dr. Asrat's brown pit bull had bitten Mr. Mejicanos. This contradicts Dr. Asrat's testimony that Mr. Mejicanos made up the story of a June 2 bite some time after he learned about the June 9 incident.

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<sup>6</sup> Indeed, it is likely that he was not the source of all the information on the form. The form identifies the owner of the dog as "Dr. Michael Asrat." Mr. Mejicanos, however, refers to Dr. Asrat as "Dr. Michael" and did not recognize the name "Dr. Asrat" when he testified.

Dr. Asrat points to the date “6/12/01” in the upper right hand corner of PX-100, and argues that the animal bite report was not completed until that date. Ms. Keller testified, however, that the date was placed there to indicate the expiration of the ten-day quarantine period for the dog. According to Ms. Keller, whose testimony on this point I find credible, a dog must be quarantined for ten days after it bites someone to determine whether it has rabies. A quarantined dog does not necessarily have to be taken to the animal shelter, but can remain with its owner, provided that the owner keeps the dog inside and observes other precautions. The animal shelter’s usual practice is to inform a dog’s owner of the requirements of the quarantine period, but the Government introduced no evidence that anyone informed Dr. Asrat of the quarantine requirements. That failure of proof, however, does not cause me to doubt the assertion in PX-100 that the bite was reported to the animal shelter on June 2.

Thus, PX-100 provides sufficient support for me to credit Mr. Mejicanos’ testimony. I emphasize, however, that the Government’s failure to introduce additional evidence that should have been available to it has made this a very close question. The police officer identified on PX-100 was not called as a witness nor was the police report introduced into evidence. The Government did not introduce testimony from the worker who completed PX-100 or from any animal control officer who spoke with Dr. Asrat about quarantine procedures. The Government also did not introduce any medical reports verifying that Mr. Mejicanos was treated for a dog bite on June 2. The lack of such evidence has given me pause, but the combination of Mr. Mejicanos’ testimony and PX-100 establishes, by a bare preponderance of the evidence, that Diesel did bite Mr. Mejicanos without provocation on June 2.

**B. The June 9 Incident**

The second incident at issue occurred on June 9, 2001. Unlike the June 2 incident, the parties agree that there was a confrontation between citizens and Dr. Asrat's dogs on that day. They differ significantly about the details of that confrontation, however, and vigorously dispute whether the dogs were provoked.

Maria Rodriguez, who resides at 3504 13<sup>th</sup> Street, testified that she went outside the building with a bag of trash in her right hand on June 9. She stated that she encountered Dr. Asrat with his dogs as she proceeded from the front steps to the area of the dumpster. Ms. Rodriguez testified that Dr. Asrat released the brown dog and told him "sic," and that the dog then rushed at her. She testified that she backed up, attempting to ward off the dog, but the dog bit her between the thumb and index finger on her right hand. A man then came to her assistance. According to Ms. Rodriguez, he wrapped a shirt around his arm and attempted to distract the dog, eventually chasing him back into the building. Ms. Rodriguez testified that two other black and white dogs were there, but were tied to a basement window. She testified that Dr. Asrat restrained the brown dog after the attack and tried to run away, but the police came and stopped him.

Miguel Antonio Mejia testified that he was passing by 3504 13<sup>th</sup> Street on June 9 when he saw a brown pit bull attacking a woman. He stated that he went to her assistance, wrapping a shirt around his arm to distract the dog. Mr. Mejia testified that he eventually was successful in distracting the dog from the woman, but the dog then turned on him and bit him on his right leg



and his right hand. The bites broke his skin and caused him to bleed. Mr. Mejia testified that he knew two other dogs were there, but could not describe them. On cross-examination, he denied doing anything to provoke the dogs, and insisted that he used nothing but his shirt to ward off the dogs.

Dr. Asrat testified that he was removing the three dogs from the basement apartment because it was being painted, and that he had a leash on each of them. He testified that Mr. Mejia, whom he described as intoxicated at the time, approached him and asked for money. According to Dr. Asrat, Mr. Mejia began taunting the dogs, wrapping his shirt around his arm and using it like a bullfighter's cape. Mr. Mejia also picked up a metal pole that the painters had been using and swung it at the dogs, causing them to become agitated.<sup>7</sup> Dr. Asrat stated that a group of people on the street were encouraging Mr. Mejia as he bothered the dogs. He testified that he warned Mr. Mejia to stop and attempted to restrain the dogs, but Diesel, the brown dog, broke free. As Diesel broke free, Ms. Rodriguez came out with the trash bag. Dr. Asrat contended that Diesel was jumping at the trash bag. He insisted that Diesel did not bite her, but may have scratched her in an effort to get the trash bag that she was holding. Dr. Asrat testified that he then tied up the other two dogs and ran to get Diesel, who was frightened by the incident and was hiding under a car. He asserted that Mr. Mejia continued taunting the other two dogs, and Leika, one of the black and white dogs, bit him.

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<sup>7</sup> The pole has been introduced into evidence as RX-204. It is made of metal and is hollow. It measures about four feet long and about three-quarters of an inch in diameter. Various witnesses have described it as a pipe or a stick. It is painted, and resembles a stick. Only by coming very close can one determine that it is made of metal. Its description as a pipe also is understandable, as it is a length of hollow metal.

Doris Underwood, a tenant in the building, testified and corroborated some aspects of Dr. Asrat's testimony. She testified that she looked out her window when she heard a commotion outside. She saw a trash bag that had been dropped on the front steps and she saw a man whom she identified as Mr. Mejia jump the fence and jab at one of the dogs with a stick.<sup>8</sup> That dog was a black and white dog. She did not see a brown dog at any time during the incident, nor did she see Ms. Rodriguez bitten. She testified that she did not see the black and white dog bite Mr. Mejia.

Because Ms. Underwood saw a bag of trash that had been dropped when she looked out the window, and because she never saw the brown dog, I find that she looked out after Diesel bit Ms. Rodriguez. Thus, she can not provide direct corroboration of whether the brown dog was provoked to bite Ms. Rodriguez. She was very clear, however, that Mr. Mejia was jabbing at the black and white dog with a stick, thereby contradicting Mr. Mejia's testimony that he used only his shirt to ward off the dogs. Ms. Underwood is a disinterested witness and her certainty on this point persuades me that Mr. Mejia used the pole to strike or threaten the dogs, despite his denial.

I also credit Dr. Asrat's testimony that Leika was the dog that bit Mr. Mejia. Dr. Asrat so testified in response to my direct question at the close of his testimony. Until that point in the hearing, there was no evidence that Leika had bitten anyone and consequently no basis for a finding that she met the definition of a dangerous dog. Thus, Dr. Asrat's testimony identifying

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<sup>8</sup> The parties have stipulated that the pole in evidence as Exhibit 204 is the stick that Ms. Underwood observed in Mr. Mejia's hand.

Leika was credible precisely because it was so contrary to his interests.<sup>9</sup> Ms. Underwood's testimony also provides corroboration on this point. While she did not see a dog bite Mr. Mejia, she did see him jump the fence and jab the pole at the black and white dog. This occurred after Diesel left the scene, because she never saw a brown dog. It is unlikely that Mr. Mejia, after suffering painful bites to both his knee and his hand from one dog, would jump the fence and attack another dog with a pole. I find, therefore, that Ms. Underwood saw Mr. Mejia before he was bitten and that Leika, the black and white dog, must have bitten him.

I have found Mr. Mejia's testimony not credible on two important issues: the identity of the dog that bit him and his use of the pole, or stick, to ward off the dogs. This places his credibility on other issues in doubt. As a result, I credit Dr. Asrat's testimony that the incident began with Mr. Mejia agitating the dogs by poking at them with the pole and that Diesel broke away in response to Mr. Mejia's harassment.<sup>10</sup> I further find that Ms. Rodriguez came onto the scene after Mr. Mejia had been provoking the dogs, and that Diesel attempted to get the trash bag from Ms. Rodriguez because he was already in an agitated state due to Mr. Mejia's actions.<sup>11</sup>

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<sup>9</sup> Indeed, after a recess, Dr. Asrat objected to my eliciting of that testimony. Although I overruled the objection, his making of it demonstrates his recognition that the testimony was adverse to his interests. This enhances the credibility of that admission.

<sup>10</sup> A different version of the events of June 9 is recounted in PX-102 (page 4), which purports to record a conversation with a witness to the incident. That account differs from both Dr. Asrat's and Mr. Mejia's testimony in significant respects. Because the witness was not called by the Government and subjected to cross-examination, although he was named on the Government's witness list, I have no basis for finding that his unique version of the disputed facts in this case is more credible than that of witnesses who testified. By contrast, I gave appropriate weight to PX-100 because it was consistent with the testimony of Mr. Mejicanos, thereby refuting Dr. Asrat's specific claim that Mr. Mejicanos fabricated a story long after the fact.

<sup>11</sup> I evaluate Ms. Rodriguez' testimony that Dr. Asrat told the dog to "sic" in light of my finding that she arrived on the scene during an ongoing confrontation between Dr. Asrat and Mr. Mejia and in light of her limited understanding of English. As a result, I can not find that Dr. Asrat ordered the

I reject Dr. Asrat's argument that Diesel did not bite Ms. Rodriguez. Although there was no visible scar in the area of the bite, the record from the hospital that treated her after the incident states that she was treated for a dog bite. PX-104. While the bite may have been minor, it nevertheless was a bite.

### **III. Conclusions of Law**

There are two elements to the statutory definition of "dangerous dog." A "dangerous dog" is defined as a dog that: [1] "[h]as bitten or attacked a person or domestic animal [2] without provocation." D.C. Code §6-1021.1(1)(A)(i). I have found that Diesel bit Mr. Mejicanos on June 2 and that there was no provocation for that bite. Therefore, the evidence concerning the June 2 incident establishes that Diesel meets the statutory definition of a dangerous dog.

The evidence concerning the June 9 incident does not demonstrate that Leika is a dangerous dog. Leika bit Mr. Mejia, but only after he threatened her and/or struck her with a pole. Such actions constitute provocation, and Leika, therefore, can not be found to be a dangerous dog based upon the evidence.

Whether the evidence of the June 9 incident shows that Diesel is a dangerous dog presents a different question. In light of my conclusion that Diesel is a dangerous dog based upon the June 2 incident, I arguably do not need to decide whether the evidence of the June 9

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dog to attack her. On this record, it is just as likely that Ms. Rodriguez overheard part of the exchange between the two men, which may or may not have included the word "sic."

incident also shows that he is a dangerous dog. That issue, however, may have some bearing upon whether Diesel would be a significant threat if returned to Dr. Asrat. For that reason, and in the interest of having a complete record, I will decide whether the evidence concerning the June 9 incident provides an independent basis for concluding that Diesel is a dangerous dog.

I have found that Diesel bit Ms. Rodriguez on June 9.<sup>12</sup> The evidence shows that she did nothing to provoke him. She simply came upon the scene where Mr. Mejia was provoking the dogs. Diesel's effort to run away was a direct result of Mr. Mejia's provocation, however, and his agitated state was a significant factor in his attempt to get the trash bag from Ms. Rodriguez. Accordingly, I conclude that Mr. Mejia's provocation of Diesel caused Diesel to bite Ms. Rodriguez. Although not provoked by Ms. Rodriguez, Diesel nevertheless was provoked on June 9. The events of June 9, therefore do not support a conclusion that Diesel meets the definition of a dangerous dog. This does not, however, change my conclusion that the evidence regarding the June 2 incident establishes that he met the definition on that date.

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<sup>12</sup> Even if I credited Dr. Asrat's testimony that Diesel only scratched Ms. Rodriguez, the evidence still would establish that Diesel's actions on June 9 satisfied that first element of the definition, which requires proof that a dog has "bitten or attacked" someone. D.C. Code § 6-1021.1(1)(A)(i).

#### IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this \_\_\_\_\_ day of \_\_\_\_\_, 2001:

**ORDERED**, that the Government has not introduced sufficient evidence to prove that Leika, a dog owned by Respondent Kinfé-Michael Asrat, satisfies the definition of a dangerous dog. Therefore, the dangerous dog statute, D.C. Code § 6-1021 *et seq.* does not authorize the Government to retain custody of Leika; and it is further

**ORDERED**, that the Government has proven that Diesel, a dog owned by Respondent Kinfé-Michael Asrat, satisfies the definition of a dangerous dog and that further proceedings are necessary to determine whether Diesel will constitute a significant threat to the public health and safety if returned to his owner; and it is further

**ORDERED**, that, as requested by Respondent, the parties shall have an opportunity to proffer additional evidence relating to whether Diesel will constitute a significant threat to the public health and safety if returned to his owner, including, but not limited to, evidence concerning Dr. Asrat's compliance with the requirements of D.C. Code § 6-1021.4 and 6-1021.5, including the requirements of licensing, vaccinations, proper enclosure, signage, muzzling and insurance.<sup>13</sup> Any such evidence shall be filed and served upon the adverse party on or before

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<sup>13</sup> With respect to insurance, the parties should note that evidence sufficient to demonstrate that a policy actually covers any injury caused by the dangerous dog is necessary. A mere certificate of insurance or a policy binder is likely to be insufficient. A copy of a policy or other equivalent evidence showing the terms of the liability coverage provided is necessary.

August 20, 2001. The parties need not re-submit evidence already in the record that is relevant to this issue. Only evidence in addition to that already admitted need be submitted. Any party wishing to call additional witnesses on the significant threat issue shall identify the witness(es) and shall provide a brief summary of the witness' expected testimony. After reviewing the parties' filings, if any, I will issue an order governing further proceedings; and it is further

**ORDERED**, that the Government shall arrange for hand delivery of a copy of this order to Dr. Asrat's address by 5:00 PM on July 28, 2001, and shall file and serve a certification of its compliance with this paragraph on or before close of business on July 30, 2001.

/s/      **7/27/01**

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John P. Dean  
Administrative Judge